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5

6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 KENNETH ROWELL,

12 Defendant.

13 No: CR-13-6070-WFN
14 AMENDED
15 GOVERMENTS RESPONSE TO
16 DEFENDANT'S MOTION TO
17 RECONSIDER CONDITIONS OF
18 RELEASE

19 Plaintiff, United States of America, by and through Michael C. Ormsby, United
20 States Attorney for the Eastern District of Washington, and Alexander C. Ekstrom,
21 Assistant United States Attorney for the Eastern District of Washington, responds to
22 the Defendant's Request To Reconsider Detection (ECF No. 25), as follows:

23 **I. PROCEDURAL HISTORY**

24 On December 2, 2013, a Criminal Complaint was filed, charging the Defendant
25 with a violation of 21 U.S.C. section 841(a)(1), Possession With Intent to Distribute A
26 Controlled Substance, Methamphetamine. (ECF No. 1). The same day, a warrant
27 issued. (ECF No. 2). The Defendant was arrested, and had his initial appearance on
28 December 4, 2013. (ECF No. 3). The Government filed a Motion for Detention, and
the bail hearing was scheduled for December 9, 2013. (ECF Nos. 4, 10). At the
Detention Hearing on December 9, 2013, in front of Magistrate Judge John T.
Rodgers, after argument of counsel, the Defendant was ordered detained. (ECF No.

14). At that hearing, the Defendant argued that he should be released to his parents,
1 and indicated that he could work for his father's construction company. Magistrate
2 Judge Rodgers commented that he did not believe that there were any conditions that
3 would reasonably assure the Defendant's appearance, and the safety of the
4 community. In particular, Magistrate Rodgers pointed out that the Defendant's
5 proposal for release at the time of that hearing, to his parents, would be the same
6 conditions under which has committed crimes and is accused of committing a recent
7 series of crimes¹. Magistrate Rodgers has thus previously found the Defendant's
8 proposed release address unacceptable.

10 II. ARGUMENT

11 A Defendant may move to reopen a detention hearing based on information
12 "that was not known to the movant at the time of the hearing and that has a material
13 bearing on the issue of whether there are conditions of release on the issue whether
14 there are conditions of release that will reasonably assure the appearance of such
15 person as required and the safety of any other person and the community." 18 U.S.C.
16 section 3142(f)(2)(B). That said, it is clear that the magistrate was advised of the
17 proposed residence (ECF No. 13, page 2), and found it insufficient, in light of the
18 Defendant's past history. In addition, the Government believes that the possibility of
19 employment with his father was also proffered at the original hearing. As such, there
20 is no new information to require a hearing under the statute.

21 In addition, the Government is advised, this morning, that the certified copies of
22 the Defendant's many prior drug convictions have arrived at the Metro Drug Task
23 Force. Upon confirmation of the certified copy of Judgment and Sentence in Benton

24
25 ¹ The Defendant is a sex offender subject to registration, and has consistently
26 provided his parent's address to local authorities. The Defendant has lived in Pasco,
27 WA, by self-report, for his entire life, with the exception of one year in 2002. (ECF
28 No. 13).

1 County Superior Court Cause Number 09-1-00550-1, the Government will be filing
2 its notice of prior conviction under 18 U.S.C. section 851, which will result in a
3 mandatory minimum term of 10 years in prison, which will trigger the rebuttal
4 presumption under 18 U.S.C. section 3142(e)(3).

5 **III. CONCLUSION**

6 Because the Defendant's information is not materially different from that
7 previously presented, and because by the time of the requested hearing, the Defendant
8 will be subject to the rebuttal presumption, the Defendant's motion should be denied.
9

10 DATED this 16th day of December, 2013.
11

12 MICHAEL C. ORMSBY
13 United States Attorney

14 s/ Alexander C. Ekstrom
15 ALEXANDER C. EKSTROM
16 Assistant United States Attorney
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1 I hereby certify that on December 16, 2013, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the following: Rick L. Hoffman

4
5 s/ Alexander C. Ekstrom
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